IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1020 of 2006
In
CIVIL APPLICATION No. 770 of 2005
In SPECIAL CIVIL APPLICATION No. 12212 of 2004
with
SPECIAL CIVIL APPLICATION No. 12212 of 2004
With
CIVIL APPLICATION No. 9532 of 2006
In LETTERS PATENT APPEAL No. 1020 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GLOBAL CEMENT LTD. (HMP CEMENT LTD.) - Appellant(s)
Versus
CEMENT WORKERS' MANDAL & 3 - Respondent(s)

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Appearance :

MR SINGHI with MR AR MAJMUDAR for Appellant(s) : 1,
MR TR MISHRA for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2 - 3.
MR SHIVANG SHUKLA, ASST. GOVERNMENT PLEADER for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 27/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the order passed in Civil Application No. 770/2005 in Special Civil Application No. 12212/2004 dated 26th October, 2005 passed by the learned Single Judge, this Letters Patent Appeal has been filed by original respondent no. 2 in the main petition.

2. The question, which is involved in the present appeal is with regard to territorial jurisdiction of this Court to entertain the main petition. In Special Civil Application No. 12212/2004, by filing Civil Application No. 770/2005, an objection with regard to jurisdiction of this Court had been raised by original respondent no. 2. After hearing the learned advocates and looking to the facts of the case, by an order dated 26th October, 2005, the learned Single Judge had decided that this Court has territorial jurisdiction to entertain Special Civil Application No. 12212/2004. Being aggrieved by the aforestated order, this appeal has been filed.

3. The facts giving rise to the present litigation

in a nutshell are as under;

3.1 For the sake of convenience, the parties to the litigation have been described as appearing in Special Civil Application No. 12212/2004.

3.2 The prayer of the original petitioner before the learned Single Judge in the aforestated petition is that respondent no. 1-Indian Bank, Kolkata be directed to “deposit 50% amount of sale proceeds of HMP Cement, Porbandar with District Collector, Porbandar and the District Collector be directed to pay by an account payee cheque to each of the workman proportionately towards part payment of the legal dues to the individual workman concerned” or alternatively to issue “direction to respondent no. 1-Indian Bank to pay 50% of the amount to the petitioner-Union, who shall directly pay to the workmen by an account payee cheque either under the supervision of the District Collector, Porbandar or Assistant Labour Commissioner, Porbandar”. It has been further prayed in the petition that declaration be made to the effect that action of the Debts Recovery Tribunal, Kolkata in giving direction with regard to transfer of sale proceeds to respondent no. 1-Indian Bank without retaining the amount of workers dues be declared as illegal and without authority of law.

4. The circumstances in which the aforestated petition had to be filed by the petitioner and the reasons for making such prayers are as under;

4.1 The petitioner-union is a union of workmen working under respondent no. 2 Company. Respondent no. 2 Company is having its registered office at Kolkata and it had one of its Units at Porbandar in Gujarat. As wages of the members of the petitioner-Union for the period from July 1998 to 31st October, 1998 had not been paid by respondent no. 2-Company, the concerned workmen had approached the Labour Court, Junagadh, by raising an industrial dispute and as a result of the said litigation, the Labour Court, Junagadh had directed respondent no. 2-Company to pay Rs. 81,50,744/- to the concerned workmen. As the amount had not been paid by the Company to the concerned workmen, Recovery Application had been filed and the Recovery Application had also been granted. In pursuance of issuance of recovery certificate, District Collector, Junagadh (Porbandar) had been directed by the Labour Court to recover the said amount by way of arrears of land revenue. It appears that respondent No. 2 company had challenged the aforesaid award by way of a writ petition before this Court being Special Civil Application No. 3632 of 1999. This Court by a judgement and order dated 20th January, 2000 dismissed the petition but clarified that the amount outstanding towards wages for the period in question was Rs. 57,14,027/-. It appears that the District Collector could not recover the said amount from respondent no. 2-Company and, therefore, the petitioner-Union has filed Special Civil Application No. 11499/2001 seeking direction

against the District Collector to recover the said amount. It has been submitted that in the said petition, which is still pending, the District Collector has expressed his inability to recover the amount for certain reasons.

4.2 Respondent no. 1-Bank is a secured creditor of respondent no. 2-Company and, therefore, the said Bank had filed Original Application No. 142/1998 before the Debts Recovery Tribunal, Kolkata. In the said proceedings, the petitioner-Union had also moved an application for payment of legal dues claiming that the workmen had also equal right to recover their dues like secured creditors from respondent no. 2-Company. In the aforestated Original Application No. 142/1998, respondent no. 1 Bank filed an application seeking direction to the effect that a sum of Rs. 14,54,20,534.20 ps. be recovered from the respondent-Company alongwith interest thereof and pay the said amount to respondent no. 1-Bank.

4.3 In pursuance of the aforestated proceedings, Debts Recovery Tribunal, Kolkata passed certain orders and ultimately after sale of the entire plant, machinery and building of the Company situated at Porbandar, a sum of Rs. 3.81 Crores had been realised and the said amount has been directed to be paid to respondent no. 1 Bank.

4.4 It is the case of the petitioner-Union before this Court in Special Civil Application No.

12212/2004 that the Union is entitled to equal share in the amount recovered by respondent no. 1 Bank and, therefore, the above stated prayers have been made in the said petition.

4.5 In the aforestated petition, a preliminary objection was raised by respondent no. 2-Company to the effect that this Court has no jurisdiction to entertain the petition and to give any direction to respondent no. 1 Bank to pay any amount from the sale proceeds of the assets of the company to the petitioner-Union on the ground that the Company is having its registered office at Kolkata and the proceedings had been initiated by respondent no. 1 Bank at Kolkata before the Debts Recovery Tribunal at Kolkata and the order, which has been passed by the Debts Recovery Tribunal, cannot be subject-matter of challenge before any Court except High Court of Calcutta.

4.6 According to the case of respondent no. 2-Company, this Court is not having territorial jurisdiction to entertain the petition as the respondent-Company is having its registered office at Kolkata and more particularly when the amount of sale proceeds recovered by respondent no. 1 Bank has been directed to be appropriated in a particular manner by the Debts Recovery Tribunal, Kolkata.

4.7 According to the case of the respondent-Company, sale proceeds are to be appropriated in a particular manner in pursuance of an order passed by the Debts

Recovery Tribunal, Kolkata and any direction given to the Bank, contrary to the direction given by the Debts Recovery Tribunal, Kolkata, would not be within the territorial jurisdiction of this Court.

4.8 The said Civil Application questioning jurisdiction of this Court was heard by the learned Single Judge. It was the case of the petitioner Union that in the petition filed by the Union, validity of the order passed by the Debts Recovery Tribunal, Kolkata had not been questioned. It had been further submitted that the Unit, which had been disposed of in pursuance of direction given by the Debts Recovery Tribunal was situated in Gujarat, where members of the petitioner-Union were employed and as the petitioner-Union is entitled to the amount directed to be given to them in pursuance of direction given by the Court of Competent jurisdiction-Labour Court having jurisdiction over the place where the Unit of respondent no. 2 had been situated and where the workmen of respondent no. 2 were working, it cannot be said that this Court has no jurisdiction to entertain the petition.

4.9 After hearing the learned advocates, the learned Single Judge has come to the conclusion that this Court has jurisdiction to entertain the petition filed by the petitioner-Union.

5. Learned advocate Shri Singhvi appearing for the appellant has submitted that the learned Single Judge

ought not to have held that this Court has jurisdiction to entertain the petition for the reason that all the respondents in the said petition are from Kolkata.

6. It has been submitted by him that the Debts Recovery Tribunal, whose order is to be implemented by respondent no. 1, is also situated at Kolkata and the said order had also been passed at Kolkata.

7. The learned advocate has therefore submitted that the cause of action has not arisen in Gujarat because the property had been sold in pursuance of a direction by the Debts Recovery Tribunal, Kolkata and the amount of sale proceeds is also with respondent no. 1 Bank, which is at Kolkata. It has been further submitted by him that the order passed by the Debts Recovery Tribunal can be challenged only at Kolkata in the High Court, but instead of challenging the validity of the said order by filing a petition in Calcutta High Court, the petitioner-Union has indirectly questioned the validity of the order of the Debts Recovery Tribunal in this Court by making prayers, which, if granted, would be contrary to the direction given by the Debts Recovery Tribunal, Kolkata.

8. It has been further submitted by him that simply because the petitioner-Union has stated that it does not want to challenge the validity of the order passed by the Debts Recovery Tribunal, Kolkata, it

would not mean that this Court would have jurisdiction to entertain the petition, especially when effect of grant of any of the prayers made in the petition is going to result into change in the order passed by the Debts Recovery Tribunal, Kolkata.

9. It has been further submitted by him that the petitioner-Union had also submitted an application before the Debts Recovery Tribunal, Kolkata and the said application was also notified for hearing from time to time As an application praying for relief of similar nature had already been filed before the Debts Recovery Tribunal, Kolkata, the petitioner-Union cannot make a similar prayer before this Court without challenging the final order passed by the Debts Recovery Tribunal, Kolkata. The learned advocate has shown from the record as to how the petitioner-Union was represented before the Debts Recovery Tribunal and has submitted that the only way open to the petitioner-Union is to challenge the order passed by the Debts Recovery Tribunal before the High Court of Calcutta.

10. In the course of hearing, learned advocate Shri Mishra appearing for the petitioner-Union had made certain submissions with regard to fraud committed by some of the parties whereby the workmen were deprived of the amount payable to them. In reply to the said allegation, learned advocate Shri Singhvi has submitted that in the petition or in the application, the petitioner-Union has not alleged any fraud and

simply by making some oral averments, at the time of hearing, it cannot be said that any of the respondents had committed any fraud. It has been lastly submitted by learned advocate Shri Sanghvi that if any prayer for giving any direction to the Collector, Porbandar is to be pressed, proper course for the petitioner would be to agitate the said issue in Special Civil Application No. 11499/2001, which is still pending.

11. So as to substantiate his case, the learned advocate has relied upon the following judgements.

(1) **KUSUM INGOTS & ALLOYS LTD. Vs UNION OF INDIA, 2004(6) SCC 254;**
(2) **OM PRAKASH SRIVASTAVA Vs UNION OF INDIA AND ANR, 2006 (6) SCC 207;**
(3) **UNION OF INDIA AND ORS Vs ADANI EXPORTS LTD AND ANR, 2002 (1) SCC 567;**
(4) **INDUSTRIAL CREDIT AND INVESTMENT CORPORATION OF INDIA LTD. Vs GRAPCO INDUSTRIES AND ORS, 1999 (4) SCC 711.**

12. On the other hand, learned advocate Shri Mishra has submitted that this appeal is not maintainable because it is not against any final order. He has further submitted that the appeal could not have been filed by the respondent-Company because the respondent-Company is not aggrieved by any order. The petitioner-Union has filed the petition praying for reliefs against the respondent-Bank.

13. He has further submitted that by an order dated 9th February, 2005 passed in Letters Patent Appeal No. 19/2005 in Special Civil Application No. 12212/2004, this Court, (Coram:- M.S. Shah & D.H. Waghela, JJ.) has indirectly decided that this Court has jurisdiction to entertain the petition because the appeal was partly allowed by this Court in the aforestated matter.

14. He has further submitted that this Court has jurisdiction to entertain the petition because assets, which have been sold, were situated in Gujarat and members of the petitioner-Union i.e. workmen had rendered their services in Gujarat and, therefore, the learned Single Judge has rightly decided that this Court has jurisdiction to entertain the petition.

15. The learned advocate has also relied upon the following judgements to substantiate his case.

(1) **AIR 1957 Allahabad 671 Bireshwar Chakravarti Vs L.N. Kavla & Ors;**
(2) **AIR 1971 Madras 155 L.V. Veeri Chettiar and Anr. Vs. Sales Tax Officer, Bombay;**
(3) **AIR 1983 Calcutta 253 Industrial Fuel Marketing Co. Vs. Union of India;**
(4) **(2004) 6 SCC 254, Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr.**

16. We have heard the learned advocates at length

and have also considered the judgements cited before us and the peculiar facts of the case. In view of the fact that the judgment challenged in this appeal was delivered by the learned Single Judge in original jurisdiction of this court, in our opinion, this LPA is maintainable.

17. Upon hearing the learned advocates and looking to the facts of the case, it cannot be disputed that the respondent-Company is having its registered office at Kolkata. However, it was having one of its Units at Porbandar in Gujarat and members of the petitioner-Union i.e. workmen of the Company had worked for the Company in Gujarat. It is also not in dispute that the workmen of the Company had raised an industrial dispute before the Labour Court, Junagadh and the Reference Application had been ultimately decided in favour of the workmen and the Labour Court, Junagadh was also pleased to issue recovery certificate as the amount payable as per the order of the Labour Court had not been paid to the workmen of the respondent-Company.

18. As the amount was not paid to the workmen, recovery certificate had been issued and the Collector, Junagadh(Porbandar) had also been directed to recover the amount from the respondent-Company.

19. Special Civil Application No. 11499/2001 filed by the workmen of the Company, wherein it has been prayed that the Collector, Junagadh be directed to

recover the amount, is still pending and in view of the fact that the order passed by the Labour Court in favour of the workmen has become final, the workmen of the respondent-Company are entitled to the amount reflected in the Recovery Application.

20. In spite of the aforestated factual aspect, it cannot be disputed that for some amount lent by respondent no. 1 Bank to respondent no. 2 Company, Original Application No. 142/1998 had been filed in the Debts Recovery Tribunal at Kolkata and it also cannot be disputed that the Debts Recovery Tribunal, Kolkata had jurisdiction to decide the said application. As submitted by the learned advocates, the order passed by the Tribunal has not been challenged on the ground of jurisdiction by any party so far.

21. If respondent no. 2 Company had borrowed money from respondent no. 1 at Kolkata, and if an order has been passed by Debts Recovery Tribunal in respect of unpaid dues of respondent no. 1 Bank, the said order cannot be challenged in Gujarat and High Court of Calcutta is the only Court, which has jurisdiction to entertain the appeal against the order passed by the Debts Recovery Tribunal, Kolkata. By an order dated 9.9.2004, the Debts Recovery Tribunal, Kolkata has directed that from the amount realised from the sale of the assets of the Company some amount be appropriated by respondent no. 1 Bank. Appropriation of the said amount would be in pursuance of a

direction given by the Debts Recovery Tribunal, Kolkata and no appeal against the said appropriation can be filed in this Court.

22. If the petitioner-Union wants to challenge the validity of the order whereby the amount has to be appropriated in favour of the Bank, the petitioner-Union must approach the Court of Competent jurisdiction and in any case High Court of Gujarat is not the Court having jurisdiction over the Debts Recovery Tribunal, Kolkata even if some of the properties of the Company had been situated in Gujarat and the amount had been realised upon sale of the said assets.

23. It is pertinent to note that the workmen of respondent no. 2 Company-the present petitioner had filed an application in Debts Recovery Tribunal, Kolkata but the said application could not be decided in favour of the petitioner either because nobody had appeared for the petitioner or there was no merits in the claim, which the petitioner Union had made before the Debts Recovery Tribunal, Kolkata. In any case, if the petitioner-Union is aggrieved by the order passed by the Debts Recovery Tribunal, Kolkata, the impugned order should be challenged before appropriate forum and not before this Court.

24. We do not agree with the submission made by learned advocate Shri Mishra that this Court has already decided in Letters Patent Appeal No. 19/2005

in Special Civil Application No. 12212/2004 that this Court has territorial jurisdiction to entertain this petition. Upon perusal of the contents of paragraph 13 of the order/judgement delivered in LPA No. 19 of 2005 in Special Civil Application No. 12212/2004 it is very clear that the issue with regard to jurisdiction was not decided in the said order/judgement.

25. If any direction as prayed for in the petition filed by the petitioner union is given, it would invariably affect the direction given by the Debts Recovery Tribunal, Kolkatta and in that event, the order of the said Tribunal would be impliedly modified by this court, which has no jurisdiction to examine validity of the orders passed by the Debts Recovery Tribunal, Kolkatta.

26. Looking to the aforestated facts, in our opinion, this Court has no jurisdiction to entertain any petition wherein validity or implementation of any order passed by the Debts Recovery Tribunal, Kalkota has been questioned.

27. In the facts and circumstances of the case, in our opinion, this court has no jurisdiction to entertain Special Civil Application No. 12212 of 2004 though the sale proceeds realised upon sale of the assets of respondent No. 2 company were situated in Gujarat and the members of the petitioner-union had rendered their services in Gujarat.

28. The appeal is, therefore, allowed and the order dated 29.10.2005 passed by the learned Single Judge in Civil Application No. 770 of 2005 in Special Civil Application No. 12212 of 2004 is quashed and set aside.

29. As it has been held in this appeal that this court has no jurisdiction to entertain Special Civil Application No. 12212/04, the said petition now does not survive and the said petition is also disposed of accordingly. A copy of this order be also kept with the papers of Special Civil Application No. 12212/04.

30. In view of the fact this appeal has been allowed, Civil Application No. 9532/2006 does not survive and it is disposed of accordingly.

(Anil R. Dave, J.)

(H.N. Devani, J.)

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